

**REMARKS**

Initially, applicants would like to thank the examiner for discussing the pending issue, and various ways to resolve it, on June 3, 2004.

The latest office action indicates that the examiner continues to contend that communications, which applicants filed on November 21, 2003 and February 24, 2004, are not fully responsive to the October 3, 2003 office action. The examiner asserts that figure 1 must be modified to add a feature, which was added to the claims. Because applicants chose not to acquiesce to the examiner's request, instead presenting reasons why figure 1 does not require modification, the examiner concluded that applicants failed to fully respond to the examiner's objection to the drawings.

The examiner correctly recognizes that applicants do not agree that figure 1 must be modified. As explained previously, the element added to claim 9 (i.e., the requirement that the passivation layer cover the flash memory cell) is a feature that is inherent in any conventional flash memory. As such, its detailed illustration is not essential for a proper understanding of the invention. The patent rules specify that such a feature should be illustrated in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box). See 37 C.F.R §1.83. This applicant has done.

Applicants' figure 1 includes a labeled rectangular box, which the specification identifies as "substrate 101." As mentioned in the specification "substrate 101 . . . includes conventional flash memory features, including flash memory cells." (See applicants' specification, at page 4, lines 5-6.)

Because applicants' claimed invention does not modify the substrate upon which passivation layer 103 rests from one conventionally used in a flash memory, there is no reason to add further detail to substrate 101 that corresponds to conventional features that are found in a flash memory substrate.

As explained previously, inserting into figure 1 a labeled box within block 101 and beneath passivation layer 103 that represents a flash memory cell (the modification that the examiner apparently requests) will not further clarify applicants' claimed invention. Because anyone skilled in the art will already appreciate that substrate 101 includes flash memory cells that passivation layer 103 covers, it is not essential for a proper understanding of the invention to add such a labeled box that is covered by the passivation layer.

In the latest office action, the examiner noted that figure 1 shows that part of passivation layer 103 is removed. As mentioned in the specification, "[A]fter the passivation layer is formed, it is etched to define bond pads, which will be used to connect the device to the chip package . . . ." (See applicants' specification, at page 8, lines 8-10.) Portions of passivation layer 103 are thus removed to enable contact between the integrated circuit and the chip's package – not to expose any flash memory cells.

As explained previously, exposing the flash memory cells would be completely at odds with the now patented process (U.S. Patent No. 6,350,651), which is described in the application. That process exposes the device to UV light to neutralize process induced charge before forming the passivation layer. This change in process sequence enables a UV opaque passivation layer to b

formed – notwithstanding the fact that the passivation layer must cover the flash memory cells. There is no advantage to applicants' patented process, over prior practice, unless the passivation layer in the claimed flash memory covers the flash memory cells. For that reason, anyone skilled in the art would realize that the flash memory device that is formed using that patented process must include a passivation layer that covers the flash memory cells.

Applicants' figure 1 illustrates the novel passivation layer 103 as positioned upon a conventional flash memory structure. That conventional flash memory structure, which will include flash memory cells that are positioned beneath a passivation layer, is schematically represented in precisely the manner 37 C.F.R. §1.83(a) recommends. Consequently, there is no reason to modify the drawing to include additional detail.

**Applicants Have Fully Responded  
to the October 3, 2003 Office Action**

The examiner's contention that applicants did not fully respond to the October 3, 2003 office action is based solely upon applicants' alleged failure to properly reply to the objection to the drawings, which was presented in that office action. Applicants fully responded to that objection as required under 37 C.F.R. §1.111(b), which provides:

In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action.

As to the objection to the drawings that was presented in the October 3, 2003 office action, each of applicants' November 21, 2003 and February 24, 2004 communications "distinctly and specifically points out the supposed errors in the examiner's action." Namely, that the objection is in error because it is unnecessary to modify figure 1 in the requested manner, for reasons applicants have set forth ad nauseam. For a reply to such an objection to be fully responsive, 37 C.F.R. §1.111(b) requires nothing more.

By referencing "supposed errors in the examiner's action," 37 C.F.R. §1.111(b) contemplates that an examiner may maintain an objection – notwithstanding an applicant's arguments to the contrary – and may even be correct in doing so. It is improper, however, to find an application to be abandoned solely because the examiner disagrees with an applicant's contention that the objection should be withdrawn -- even if it may subsequently be determined that the objection was proper.

A decision to maintain the pending objection to the drawings does not alter the fact that applicants fully and appropriately responded to it. It would be improper for the examiner to find that applicants abandoned the pending application solely because the examiner continues to disagree with applicants' contention that it is unnecessary to modify figure 1. Because applicants' November 21, 2003 and February 24, 2004 communications each provide full responses to the pending objection to the drawings, applicants respectfully request the examiner to reconsider the finding that applicants did not fully

respond to the October 3, 2003 office action, and to consider each of applicants' communications in their entirety.

**The Examiner May Issue a New Office Action that Simply Reiterates the Objection to the Drawings**

Even if the examiner continues to find that applicants have not fully responded to the October 3, 2003 office action (because applicants presented reasons why figure 1 does not require modification instead of modifying that drawing in the requested manner), the examiner is not required to find that applicants have abandoned the application for failure to fully respond to the pending objection to the drawings.

The MPEP authorizes the examiner to simply issue a new (non-final or final) office action, which reiterates that objection. In this regard, MPEP 714.03 specifies:

Where an amendment substantially responds to the rejections, objections, or requirements in a non-final Office action (and is a *bona fide* attempt to advance the application to final action) but contains a minor deficiency (e.g., fails to treat every rejection, objection, or requirement), the examiner may simply act on the amendment and issue a new (non-final or final) Office action. The new Office action may simply reiterate the rejection, objection, or requirement not addressed by the amendment (or otherwise indicate that such rejection, objection, or requirement is no longer applicable).

If the examiner continues to find that applicants' figure 1 must be modified, MPEP 714.03 indicates that it is proper for the examiner to simply issue a new (non-final or final) office action that reiterates the pending objection to the drawing. For example, if the examiner remains unconvinced that the pending claims describe allowable subject matter, the examiner may issue a final

action that continues to reject them. MPEP 714.03 authorizes the examiner to carry over into such a final action the pending objection to the drawings.

In such a final action, the examiner may continue to reject claims 9-15 under 35 U.S.C. §112 because the phrase "the passivation layer covering the flash memory cell" allegedly is not supported by the original disclosure. As a practical matter, the Board of Patent Appeals and Interferences' resolution of that issue will also determine whether applicants must modify figure 1.

The Board may conclude that applicants' specification inherently describes the phrase "the passivation layer covering the flash memory cell" because it would be inconsistent to read the specification any other way. Such a finding would confirm that a detailed illustration of this feature is not essential for a proper understanding of the invention because those skilled in the art would already realize that the passivation layer must cover the flash memory cell in the claimed flash memory. For that reason, such a finding would render it unnecessary to modify figure 1 to include a labeled box beneath passivation layer 103 and within block 101, which represents a flash memory cell.

For these reasons, even if the examiner continues to believe that the applicants have not fully responded to the October 3, 2003 office action, the examiner should not find that they abandoned the application, but instead should simply issue a new office action that reiterates the objection to the drawings.

**Alternatively, the Examiner Should Hold  
the Objection to the Drawings in Abeyance  
Until Allowable Subject Matter is Indicated**

An objection may be held in abeyance until allowable subject matter is indicated. In this respect, 37 C.F.R. §1.111(b) provides:

If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated.

Resolution of the objection to the drawings is not necessary to further consideration of the claims. The drawings as presently configured are sufficient to enable the examiner to determine whether the pending claims are patentable. For that reason, if the examiner decides not to issue a new office action that simply reiterates the pending objection (as authorized by MPEP 714.03), applicants respectively request – in the alternative and in accordance with 37 C.F.R. §1.111(b) – that the objection be held in abeyance until allowable subject matter is indicated by the examiner or by the Board of Patent Appeals and Interferences.

**Conclusion**

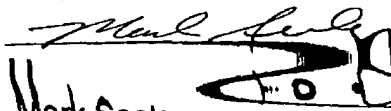
Applicants' November 21, 2003 and February 24, 2004 communications each provided full responses to the pending objection to the drawings. For that reason, it would be improper for the examiner to find that applicants abandoned the pending application for failing to fully respond to the October 3, 2003 office action. If the examiner continues to find that applicants have not fully responded to that office action (because applicants did not properly respond to the pending objection to the drawings), then applicants respectfully request the examiner to

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simply issue a new office action that reiterates the pending objection, or, alternatively, to hold that objection in abeyance until allowable subject matter is indicated.

Respectfully submitted,

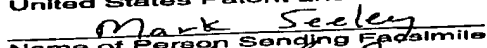
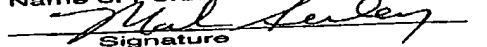
Date: June 15, 2004

  
Mark Seeley  
Reg. No: 32,299  
ATTORNEY FOR APPLICANTS

Intel Corporation  
Mail Stop SC4-202  
2200 Mission College Blvd.  
Santa Clara, CA 95052-8119  
(408) 765-7382

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(37 C.F.R. § 1.8(a))

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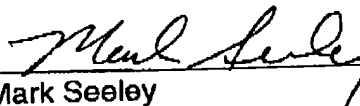
  
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alternatively, to hold that objection in abeyance until allowable subject matter is  
indicated.

Respectfully submitted,

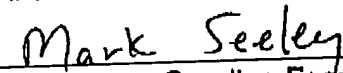
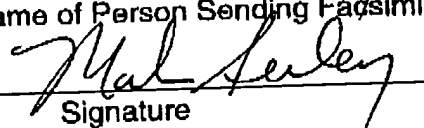
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Mark Seeley  
Reg. No: 32,299  
ATTORNEY FOR APPLICANTS

Intel Corporation  
Mail Stop SC4-202  
2200 Mission College Blvd.  
Santa Clara, CA 95052-8119  
(408) 765-7382

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